

AS

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NOS. 96-177-E & 95-1221-E - ORDER NO. 97-352  
APRIL 29, 1997

IN RE: Docket No. 96-177-E - Joint Applica-	)	ORDER
tion of Duke Power Company & Broad	)	DENYING
River Electric Cooperative, Inc. for	)	JOINT
Assignment of Certain Service Areas	)	PETITION FOR
in Cherokee County, South Carolina.	)	RECONSIDERATION
	)	AND/OR REHEARING
AND		
Docket No. 95-1221-E - Duke Power	)	
Company and Broad River Electric	)	
Cooperative, Inc.,	)	
	)	
Complainants,	)	
	)	
vs.	)	
	)	
Board of Public Works of the City	)	
of Gaffney,	)	
	)	
Respondent.	)	
	)	
	)	

---

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Joint Petition for Reconsideration and/or Rehearing filed by Duke Power Company (Duke) and Broad River Electric Cooperative, Inc. (Broad River or the Coop.) of an Order considering a dispute between these two parties and the Board of Public Works of the City of Gaffney (the Board or Gaffney). For the reasons elucidated below, the Petition must be denied with one (1) clarification.

The Commission believes that Duke/Broad River's cited alleged errors may be divided into two parts, the first part having to do with the Commission's interpretation of Gaffney's compliance with Order No. 93-271, and the second having to do with the Commission's refusal to assign unassigned territory to Duke and Broad River.

With regard to the Commission's ruling that the Board had complied with Commission Order No. 93-271, it is clear that both Duke and Broad River simply disagree with the Commission's evaluation of the evidence.

In Docket No. 95-1221-E, Duke and Broad River essentially complained that the Board had failed to comply with Commission Order No. 93-271 dated March 23, 1993. The Order directed the Board to take certain actions concerning an electric line which the Board constructed in 1985, and concerning the customers which the Board served from the line. In Order No. 97-214, the Commission found that the Board obeyed Order No. 93-271. Duke and Broad River disagree with that finding. Duke and Broad River's assertions are without merit.

Order No. 93-271 implemented the instructions contained in an Order of the Circuit Court issued on October 20, 1992, in an action for review of a prior Order of the Commission. The Commission directed that the Board provide written notice of termination of service from a 1985 extension, that Duke and Broad River consult with the Board to arrange for transition of such customers as Duke and Broad River shall acquire upon the Board's

termination, and that the Board terminate all service from the 1985 line and dismantle electric facilities constructed by any extensions within sixty (60) days. These requirements of the Commission Order followed the language of the Circuit Court Order.

After considering the evidence in this proceeding, this Commission found that the Board had complied with Order No. 93-271. Duke and Broad River disagree, but seek reconsideration and rehearing of the Commission's findings based only on their version of the evidence.

We believe that the full evidence supports our findings. In the first place, the evidence shows that the customers were notified immediately that the Board had been required to terminate service from the 1985 line. The Board gave the required immediate notice orally and the uncontested evidence shows that the customers immediately requested the Board to continue to serve them. While the actual notice was not written, the Commission considered the immediate actual notice to be in compliance with the Circuit Court's requirement and to have achieved the purpose of its own requirement, that is, that the affected customers be aware of the need to terminate service from the 1985 line from which they were receiving the Board's service.

Second, since neither Duke nor Broad River acquired any of the affected customers upon termination of the Board's service from the 1985 line, there was no reason for Duke and Broad River to consult with the Board for an orderly transition of service. The Board proceeded to remove the 1985 line to comply with the

Commission's third requirement and construct the new 1993 line to effectuate that service.

Next, the evidence demonstrates that the Board terminated service from the 1985 line and dismantled it. While the Board's removal activities left some minor service equipment in place, that equipment was related to service drops and not the actual 1985 extension which was at issue in the Commission's original proceeding to which the Circuit Court referred. This Commission reaffirms its determination that the Board complied with Order No. 93-271. We therefore hold that Duke and Broad River's statements to the contrary are without merit.

Second, Duke and Broad River ask for reconsideration and/or rehearing of the Commission's determination that the unassigned territory in the vicinity of Gaffney remain unassigned. Duke and Broad River, in Docket No. 96-177-E, proposed that the Commission assign to them some or all of the unassigned territory in the vicinity of Gaffney. The Commission considered in this matter the public convenience and necessity pursuant to S.C. Code Ann. Section 58-27-640 (1976). The Commission considered the evidence on the whole record of the adverse effects of assignment on the Board and its future and on Piedmont Municipal Power Agency. The Commission heard testimony of customers who opposed the assignment on the grounds of its adverse effect on their right to choose. The Commission heard evidence of Duke's and Broad River's claim of duplication of facilities, which was contradicted by the Board's evidence. Neither Duke nor Broad River could describe any

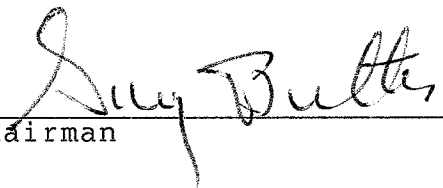
circumstance in which the presence or location of the Board's lines or facilities had adversely affected their services or systems or prevented them from serving customers who desired their service. The Commission heard the Board's uncontradicted evidence of the significance of their lines in the area at issue for system reliability and support. We believe that in light of the evidence on the whole record, we rightfully concluded that the public convenience and necessity would not be served by assignment of the area to Duke and Broad River.

We also take this opportunity to clarify one point in this matter. It appears that the premises of Charles Copeland were served by Broad River on July 1, 1969. Pursuant to S. C. Code Ann. Section 58-27-620 (1976), an electric supplier is authorized to serve all premises being served by it or to which any of its facilities for service are attached on July 1, 1969. It is unchallenged that Broad River was serving the Copeland premises on July 1, 1969. Therefore, we believe that because of the statute, Broad River has the exclusive right to serve the Copeland premises at present, since it was serving those premises on July 1, 1969.

We otherwise reaffirm and reiterate our holdings in Order No. 97-214 in these Dockets.

This Order shall remain in full force and effect until  
further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)